

Appendix N

Programmatic Agreement

APPENDIX N – PROGRAMMATIC AGREEMENT

N.1 Introduction

The Bureau of Land Management (BLM), in consultation with the State Historic Preservation Offices (SHPOs) of Wyoming, Colorado, and Utah, agreed to develop a Programmatic Agreement among the various state and federal agencies and consulting parties with an interest in the Energy Gateway South Transmission Project (Project). A Programmatic Agreement records the terms and conditions agreed upon to resolve the potential adverse effects of a complex undertaking in accordance with 36 Code of Federal Regulations 800.14(b). The Programmatic Agreement outlines the stipulations that would be followed concerning the identification, assessment, and treatment of cultural resources for the Project. Signatories agree that the Project will be administered in accordance with the stipulations set forth in the Programmatic Agreement. To date, the signatory parties include the BLM, U.S. Forest Service, National Park Service, and SHPOs of Wyoming, Colorado, and Utah. Additional signatory parties, invited signatory parties (e.g., PacifiCorp [doing business as Rocky Mountain Power, the Applicant]), and concurring parties have yet to be determined. Tribal consultation has been initiated with 33 tribes and the BLM has invited all of these tribes to participate as concurring parties to the Programmatic Agreement.

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FINAL DRAFT

**PROGRAMMATIC AGREEMENT
AMONG**

**THE BUREAU OF LAND MANAGEMENT;
THE USDA FOREST SERVICE;
THE WYOMING STATE HISTORIC PRESERVATION OFFICER;
THE COLORADO STATE HISTORIC PRESERVATION OFFICER;
THE UTAH STATE HISTORIC PRESERVATION OFFICER;
THE BUREAU OF INDIAN AFFAIRS;
THE NATIONAL PARK SERVICE;
THE U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT;
THE U. S. FISH AND WILDLIFE SERVICE;
THE UTE TRIBE OF THE UINTAH AND OURAY RESERVATION;
AND ROCKY MOUNTAIN POWER**

**REGARDING COMPLIANCE WITH
THE NATIONAL HISTORIC PRESERVATION ACT FOR THE
ENERGY GATEWAY SOUTH TRANSMISSION PROJECT**

WHEREAS, PacifiCorp, doing business as Rocky Mountain Power (Applicant) has applied for and the following federal agencies are considering the issuance of federal right-of-way (ROW) grants and associated permits for the Energy Gateway South Transmission Line Project (Undertaking): the Bureau of Land Management (BLM), the USDA Forest Service (USFS), the U.S. Army Corps of Engineers (USACE) Sacramento District, the U.S. Fish and Wildlife Service, the National Park Service (NPS), and the Bureau of Indian Affairs (BIA). These agencies (federal agencies) are Signatories to this Programmatic Agreement (PA); and

WHEREAS, the Undertaking includes the construction, operation and maintenance of an approximately 400 to 500 mile, 500kV transmission line from near Aeolus, Wyoming, to near Mona, Utah, across multiple federal, state, and local jurisdictions and across the ancestral lands of several Indian tribes, as described in Appendix A – Map of Proposed Undertaking and Alternatives; and

WHEREAS, the Applicant intends to construct, operate and maintain the Undertaking according to general parameters contained in the approved project Plan of Development (POD) for the Undertaking, which shall be appended to and made a part of the Record of Decision (ROD) authorizing the ROW grant issued by BLM; and

WHEREAS, the BLM, as lead federal agency, has determined that issuance of the ROW grant triggers the requirements of Title 54 U.S.C. § 300101 et seq. (commonly known as the National

Historic Preservation Act [NHPA] of 1966, as amended [1992]) and Title 54 U.S.C. § 306108 (commonly known as Section 106 of the NHPA) will be cited as NHPA Section 106 throughout this document; and

WHEREAS, the BLM has determined that the Undertaking may have direct, indirect, and cumulative effects on properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereinafter called historic properties, and, pursuant to 36 CFR Part 800, has consulted with the Wyoming State Historic Preservation Officer (WY SHPO), Colorado State Historic Preservation Officer (CO SHPO), and Utah State Historic Preservation Officer (UT SHPO) who are Signatories to this PA; and

WHEREAS, the effects on historic properties are multi-state in scope and cannot be fully determined prior to approval of the Undertaking, the BLM, in consultation with the SHPOs, has determined to use a phased process to identify historic properties [36 CFR 800.4(b)(2)] and assess those effects [36 CFR 800.5(a)(3)]; such that completion of the identification and evaluation of historic properties, determinations of effect on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects to the historic properties will be carried out in phases as part of planning for and prior to any Notice to Proceed (NTP) and Undertaking implementation; and

WHEREAS, the BLM has determined that a PA documenting the terms and conditions for compliance with NHPA Section 106 will be negotiated among Consulting Parties according to 36 CFR 800.14(b)(1)(ii); and

WHEREAS, this PA and the Historic Properties Treatment Plan (HPTP) that will be developed pursuant to this PA will be incorporated into the approved project POD and the BLM ROW grant for this Undertaking; and

WHEREAS, for purposes of the Undertaking, the BLM Wyoming State Office is lead for compliance with the NHPA Section 106 on behalf of the federal agencies [36 CFR 800.2(a)(2)] as evidenced by the Interagency Transmission Memorandum of Understanding (October 23, 2009) and by BLM Washington Office Instruction Memorandum 2010-169, Implementation Guidance for the Interagency Transmission Memorandum of Understanding, and/or by the signing of this PA by any responsible federal agency official, and is the primary contact for all Consulting Parties to this PA and for all Indian tribes; and

WHEREAS, the BLM has notified the Advisory Council on Historic Preservation (ACHP), pursuant to NHPA Section 106 and its implementing regulations (36 CFR 800.6(a)(1), and the ACHP has declined to participate; and

WHEREAS, the BLM recognizes its government-to-government obligation to consult with Indian tribes that may attach religious and cultural significance to historic properties that may be

affected by the proposed Undertaking and will continue to consult with affected tribes regarding their concerns under NHPA Section 106 in accordance with 36 CFR 800.2(c)(2); and

WHEREAS, the BLM, as lead federal agency for tribal consultation and coordination, has initiated consultation with the Confederated Tribes of the Goshute Reservation, Eastern Shoshone Tribe of the Wind River Reservation, Hopi Tribe, Jicarilla Apache Tribe, Navajo Nation, Northern Arapaho Tribe of the Wind River Reservation, Northwestern Band of Shoshone Nation, Paiute Indian Tribe of Utah, Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of San Juan, Pueblo of Sandia, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Santo Domingo, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Zia, Pueblo of Zuni, San Juan Southern Paiute Tribe, Shoshone-Bannock Tribes of the Fort Hall Reservation, Skull Valley Band of Goshute Indians of Utah, Southern Ute Indian Tribe of the Southern Ute Reservation, Ute Indian Tribe of the Uintah and Ouray Reservation, and Ute Mountain Ute Tribe of the Ute Mountain Reservation and has invited all of these tribes to be Concurring Parties to this PA; and

WHEREAS, the agency preferred alternative will cross Indian trust lands of the Uintah and Ouray Indian Reservation and, if selected, whether on tribal and/or individual Indian-owned lands, upon obtaining consent from the Indian landowners(s), the BIA may issue encroachment permits and grants of easement for the Undertaking, and the Ute Indian Tribe is a Signatory to this PA; and

WHEREAS, the USFS, Intermountain Region, manages National Forest System lands in Utah that would be crossed by the Undertaking and the Uinta-Wasatch-Cache National Forest is Lead for the USFS and must therefore consider whether to issue a Special Use Permit for the construction, operation, and maintenance of the Undertaking; and

WHEREAS, the Sacramento District of the U.S. Army Corps of Engineers (USACE), administers a permit program under the authority of the Rivers and Harbors Act of 1899, Section 10 (33 U.S.C. Section 403), and the Clean Water Act of 1972, Section 404 (33 U.S.C. Section 1344) and may issue permits authorizing the discharge of dredged or fill material through Section 404 (the Undertakings) associated with the Undertaking, and is a Signatory to this PA; and

WHEREAS, alternative routes may affect a portion of the Old Spanish National Historic Trail (NHT), which is co-administered by the BLM and National Park Service (NPS), and the NPS has elected to participate; and

WHEREAS, the NPS has jurisdiction over Dinosaur National Monument, and an alternative may cross the Deerlodge Road leading into the monument, and must therefore consider issuing a federal authorization for the construction, operation, and maintenance of the Undertaking; and

**[ENERGY GATEWAY SOUTH TRANSMISSION PROJECT
PROGRAMMATIC AGREEMENT]**

WHEREAS, the Applicant, as a potential grantee of the ROW, has participated in consultation per 36 CFR 800.2(c)(4), and agrees to carry out the stipulations of this PA, being responsible for all costs including, but not limited to, fieldwork, post-field analyses, preparation of all research, interim, summary, treatment, and mitigation reports, both draft and final, curation of all documentation and artifact collections in a BLM-approved curation facility and repatriation, under the oversight of the BLM, and is an Invited Signatory to this PA; and

WHEREAS, the Undertaking includes lands administered by the Utah School and Institutional Trust Lands Administration (SITLA), an agency in the State of Utah that has a responsibility to comply with Utah Code Annotated (UCA) § 9-8-404 on lands owned or controlled by the SITLA within the Areas of Potential Effects (APEs). The SITLA intends to employ this PA to address applicable requirements for actions resulting from this PA involving land administered by the SITLA. The SITLA, however, does not waive its independent state statutory jurisdiction to make final decisions concerning its lands, and is not bound in its leasing or other approval authority by actions taken, or determination made, concerning federal lands, and has therefore been consulted and invited to become an Invited Signatory to this PA; and

WHEREAS, the Undertaking includes lands administered by the Utah Department of Transportation (UDOT), an agency in the State of Utah, that has a responsibility to comply with UCA § 9-8-404 on lands owned or controlled by UDOT within the APEs. The UDOT intends to employ this PA to address applicable requirements for actions resulting from this PA involving land administered by the UDOT. The UDOT, however, does not waive its independent state statutory jurisdiction to make final decisions concerning its lands, and is not bound in its leasing or other approval authority by actions taken, or determination made, concerning federal lands, and has therefore been consulted and invited to become an Invited Signatory to this PA; and

WHEREAS, the Utah Reclamation Mitigation and Conservation Commission (URMCC) is considering issuing a license to the Applicant to construct, operate, and maintain a 500kv line across any URMCC lands crossed by the Undertaking and has therefore been consulted and invited to become an Invited Signatory to this PA; and

WHEREAS, the BLM continues to consult with the Alliance for Historic Wyoming, Mesa County CO, Milford Archaeological Research Institute, Moffat County CO, National Trust for Historic Preservation, Old Spanish Trail Association, Oregon-California Trails Association, Overland Trail Cattle Company, Tracks Across Wyoming, Utah Public Lands Policy Coordination Office, Utah Professional Archaeological Council, Utah Rock Art Research Association, Utah Statewide Archaeology Society, and the We Nooch Society and has invited all these organizations to become Concurring Parties to this PA; and

WHEREAS, reference to “Consulting Parties” shall include Signatories, Invited Signatories, and Concurring Parties. Tribes and other parties consulting under NHPA Section 106 may decline to

sign this document; however, the decision not to sign shall not preclude their continued or future participation as Consulting Parties to this Undertaking; and

WHEREAS, the BLM will require that the Undertaking be executed in accordance with the stipulations of this PA, which will be appended to the POD and incorporated into the terms and conditions of the ROW grant and associated permits that may be granted by the federal and state agencies and which shall be appended to and made a part of the ROD;

NOW, THEREFORE, the Signatories to this PA agree that the proposed Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties and to satisfy all NHPA Section 106 responsibilities of the federal agencies for all aspects of the Undertaking.

DEFINITIONS

Terms used in this PA are defined in Appendix B. All other terms not defined have the same meaning as set forth in ACHP's regulations at 36 CFR § 800.16, Section 301 of the NHPA, and BLM 8100 and 8110 Manuals.

STIPULATIONS

The BLM, in consultation with the other participating agencies, shall ensure that the following stipulations are met and carried out:

I. Area of Potential Effects

A. Defining the APE

The BLM, in consultation with the SHPOs and other Consulting Parties, has defined and documented the APE based on direct, indirect, and cumulative effects. The APE will apply to federal, state, tribal, and private lands that may be affected by the transmission line corridor, staging areas, access roads, borrow areas, transmission substations, and other related transmission infrastructure for this Undertaking. The BLM may modify the APE in accordance with Stipulation I.B. of this PA.

1. Direct Effects

- a. For above-ground transmission lines, the APE is 500 feet (250 feet on either side of the ROW centerline).
- b. The APE for access roads, except for existing crowned and ditched or paved roads, is 100 feet on either side of the centerline for a total width of 200 feet.

Existing crowned and ditched or paved roads are not part of the APE unless project-related activities involving use of these roads are planned or discovered in adjacent areas, at which time BLM may modify the APE in accordance with Stipulation I.B. of this PA.

- c. The APE for staging areas, borrow areas, substations, and other transmission infrastructure includes the footprint of the facility and a buffer of 200 feet around the footprint of the proposed activity.
- d. The APE for pulling/tensioning areas that fall outside the ROW is the footprint of the activity plus a 250-foot radius around these points.
- e. The APE for geotechnical drill sites is the boring location footprint, plus a buffer extending in a 250-foot radius from the perimeter of the boring location. In most cases, the APE for the geotechnical drill site locations will fall within the direct APE of the transmission line and other project components.
- f. The direct effects APE from operation and maintenance activities is the area of the ROW grant.

2. Indirect Effects

- a. The APE for indirect effects on historic properties considers visual, audible, and atmospheric elements that could diminish the integrity of properties for which setting, feeling, and/or association are qualifying characteristics of NRHP eligibility. The indirect APE for the Undertaking extends to the visual horizon or for 3 miles on either side of the transmission line centerline, whichever is closer.
- b. Where the APE for indirect effects includes traditional cultural properties (TCPs), properties of traditional religious and cultural importance, National Historic Landmarks (NHL), NHTs, and other classes of historic properties for which setting, feeling and/or association contributes to eligibility, additional analyses may be required and the indirect APE may be modified accordingly following procedures at I.B below.

3. Cumulative Effects

Cumulative effects are the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-

federal) or person undertakes other actions. For the purposes of this PA, the APE for cumulative effects is the same as that for direct and indirect effects.

B. Modifying the APE

1. The APE, as currently defined, encompasses an area sufficient to accommodate all of the Undertaking components under consideration as of the date of the execution of this PA. The APE may be modified when tribal consultation, additional field research or literature review, consultation with Consulting Parties, or other factors indicate that the qualities and values of historic properties that lie outside the boundaries of the currently defined APE may be affected directly, indirectly, or cumulatively.
 - a. If the BLM determines that the Undertaking or changes to the Undertaking may cause unforeseen direct, indirect, or cumulative effects to historic properties beyond the extent of the established APE, then the BLM may use the process set forth in Stipulation I.B.1.b. to determine whether to modify the APE.
 - b. Any Consulting Party to this PA may propose that the APE be modified by providing written justification and illustration of the proposed APE modification. The BLM shall send the modification proposal to all Consulting Parties and consult with them for no more than 30 days in an effort to reach consensus on the proposal. If the Signatories and Invited Signatories agree to modify the APE, the BLM will notify the Consulting Parties of the decision. If all Signatories and Invited Signatories cannot agree to a proposal for the modification of the APE, then the BLM will consider their concerns and will render a final decision.
2. Agreement to modify the APE will not require an amendment to the PA.

II. Identification, Evaluation, and Determination of Effects

- A. The BLM will ensure that all work undertaken to satisfy the terms of this PA meets the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716) (*Federal Register*, September 29, 1983), hereinafter referred to as *Secretary's Standards*, and is consistent with the ACHP guidance on archaeology found at <http://www.achp.gov/archguide/> and all applicable guidance for evaluating National Register properties. The BLM and other federal agencies have defined conventions or standards for survey corridors and survey intensity to adequately identify historic properties that may be affected by this Undertaking. Except for lands managed by USFS, all survey activity will meet BLM Manual 8110

- guidance for a comprehensive survey (BLM Class III Inventory) and be consistent with that of the SHPOs, including guidance and standards found in respective BLM and SHPO state agreements. Identification on lands managed by USFS will follow Forest Service Manual 2360.
- B. The BLM will ensure that all identification and inventory is carried out by or under the direct supervision of a person or persons meeting, at a minimum, the applicable professional qualifications standards set forth in the Secretary's Standards and the permitting requirements of appropriate states, tribal, and federal agencies.
- C. The Applicant will begin fieldwork only after they have obtained the appropriate federal, tribal, and state permits for such fieldwork. The applicable agencies shall approve Fieldwork Authorizations to conduct inventories on land they manage, respectively, within the timeframe stipulated within the managing agencies' procedures upon receipt of a complete application from the Applicant.
- D. The BLM will ensure that a cultural resource inventory will be completed in the following phases:
1. Literature Review
 - a. A literature review has been completed for a 4-mile wide corridor, 2 miles wide on either side of the reference centerline, along all alternatives of the proposed Undertaking in order to inform the NEPA analysis. Following completion of NEPA analysis, the literature review will result in a report for each state to be submitted to each BLM State Office and USFS for review and comment and will be provided to each state's SHPO, as requested.
 - b. The Applicant will conduct an updated literature review by segment to inform all subsequent phases; it will be used as a reference document to support all of the Class III inventories conducted for this Undertaking and will be a starting point for the screening process used to identify historic properties within the indirect APE, as indicated in Appendix C. The Applicant will conduct additional file searches as needed to address changes in the APE and to be current in advance of any Class III inventories.
 2. Pre-Construction Inventory
 - a. After the BLM determines the selected route, the BLM will request that the Consulting Parties identify areas they deem to have special interest to their members. Consulting Parties will provide this information to the BLM within 30 days of such request. This information will be consolidated and incorporated into the Class III report as consulting party information.

- b. Where not covered by previous acceptable Class III inventory or assessments as determined by the BLM and the applicable SHPO, the Applicant will complete Class III inventory under BLM guidance for the direct APE, with an inventory and assessment of indirect effects for the indirect APE, regardless of land ownership. The assessment of indirect effects will entail identification of historic properties that retain integrity and for which setting is an integral part of its character defining features of eligibility. In the early stages of resource identification, the Applicant will undertake a GIS viewshed analysis to determine the visibility of the Undertaking from a prescribed distance in the landscape. As indicated in Appendix C, this analysis will be used as part of the screening process developed for historic properties within the indirect APE.
- c. Where there is insufficient information for making site-eligibility determinations, and after consultation with the applicable federal and/or state agency, the BLM and SHPOs may determine that additional archaeological testing or other investigations are necessary to complete NRHP evaluations for cultural resources that may be affected. The Applicant will complete fieldwork and the BLM will complete consultation for this phase prior to the initiation of construction.
- d. Determination of archaeological site boundaries within the direct APE is required. Identified resources exceeding the direct APE that are either linear (e.g., roads, trails, fences, etc.) or extremely large will be inventoried and recorded to the same level as resources within the direct APE. The Applicant will record such resources up to a maximum of 1,200 feet beyond the boundary of the direct APE, provided access is authorized, or to the boundary of the resource beyond the direct APE, whichever is less.
- e. Documentation may entail recordation of cultural resources over multiple land jurisdictions, including private land. The Applicant will obtain private landowner consent by written documentation to allow inventory beyond the direct APE if the boundaries of cultural resources extend beyond the direct APE. If landowner consent cannot be obtained to access the portion of the site outside the direct APE, the BLM will make a determination of eligibility based upon all known information regarding the site.
- f. The Applicant may use existing resources to the extent available to identify historic properties that fall within the indirect APE that may be affected by the Undertaking. Such resources may include existing aerial photography, archival and historic documents such as Government Land Office (GLO) maps, other early maps, local histories, ethnographic information, current existing studies, geographic information system (GIS) data and any other

available information, the records search for the Undertaking, targeted field inventory provided access is authorized, and other available means.

3. Inventory During Construction

- a. This phase includes inventory, as needed and regardless of land ownership, of any variances or amendments to the ROW grant or any other changes to the Undertaking that are outside the currently defined APE (including changes in construction ROW and ancillary areas).
- b. The BLM will determine whether the proposed variance will change the indirect APE sufficiently that some additional historic properties are now adversely affected. Additional GIS viewshed analysis or other analysis may be needed to determine effects, as indicated in Appendix C. Such properties will be assessed after-the-fact, and mitigation appropriate to the effect will be determined in consultation with the appropriate Consulting Parties.
- c. Where the BLM determines that additional inventory is needed, no ground disturbance will be allowed in the area of the variance or amendment to the ROW grant or any other changes to the Undertaking until the inventory and the effects determinations and any required on-site mitigation measures are completed and an NTP is issued. The BLM will determine where construction may continue while the additional work is being completed.

E. Determinations of Eligibility and Assessment of Effects

For each cultural resource within the direct APE of a land managing agency's jurisdiction, the agency will provide recommendations for eligibility and effect to the BLM. BLM will then consult with any Indian tribe that attaches religious and cultural significance to any identified resource, and other Consulting Parties to determine NRHP eligibility pursuant to 36 CFR 800.4(c)(1), following National Register Bulletin 15, "*How to Apply the National Register Criteria for Evaluation*." If the parties cannot reach concurrence on a determination of NRHP eligibility, the documentation will be forwarded to the Keeper of the National Register (Keeper) for a formal determination. If the parties cannot reach concurrence on other determinations, the question will be referred to the ACHP.

The BLM, in consultation with Consulting Parties, will assess effects in order to identify all reasonably foreseeable and potentially adverse effects that occur as a result of the Undertaking.

The BLM will use a visual assessment to determine the effects to setting for those historic properties for which setting, feeling and/or association contribute to eligibility. Such visual assessments will use appropriate state-specific procedures, as well as the screening procedures and GIS viewshed analysis previously discussed and identified within Appendix C.

Determinations of effect may be subject to change due to alterations in the Undertaking and APEs. The BLM will consult with all appropriate Consulting Parties to this PA if any changes in the Undertaking or APE require changes in the agency's determinations of effect.

1. Consultation with Federal Agencies

The Applicant will provide the Class III inventory reports to the BLM State Office lead. The BLM will distribute the reports to the applicable BLM field offices and other federal agencies who are Signatories to this PA. Agencies will have 30 days from receipt to review the reports and provide comments to BLM. The BLM will take the comments into account prior to submitting the Class III report, including the recommendations for eligibility and assessments of effect, to the appropriate SHPO. The BLM will respond to the agencies regarding how their comments were incorporated into the final document.

2. Consultation with Tribes

The BLM will provide the Class III inventory reports to tribes who have signed this PA or who have signed a data sharing agreement, consistent with BLM Handbook H-8120-1, Part IV.E. Tribes will have 30 days to review the Class III report and provide comments on eligibility and effect to the BLM. Additional review time may be requested following procedures at Section III.B of this PA.

3. Consultation with Other Consulting Parties

The Applicant will provide to each BLM State Office a summary document containing brief descriptions, recommendations for eligibility, and assessment of effect for each site. The BLM will distribute the summary document to Consulting Parties (other than tribes and SHPOs) for review, and consult over eligibility and effect, following 36 CFR 800.4(c) and 36 CFR 800.5(a)(1) and (a)(2)(i)-(vii). The document will be consistent with confidentiality provisions of 36 CFR 800.11(c).

Consulting Parties will have 30 days to review the summary document and provide comments to the BLM. The BLM will take the comments into account

prior to submitting the Class III report, including the recommendations for eligibility and assessments of effect, to the appropriate SHPO. The BLM will respond to the Consulting Parties regarding how their comments were incorporated into the final document.

4. Consultation with SHPOs

BLM will provide the Class III inventory report to the appropriate SHPO and will seek a consensus determination/s of eligibility and effect with SHPO for all cultural resources whether on federal, state, tribal, or private lands. These determinations of effect will serve as the basis for the development of state-specific HPTPs.

- a. If the BLM and SHPO agree that the cultural resource is not eligible for listing in the NRHP, no further review or consideration under this PA will be required for such cultural resources.
- b. If the BLM and SHPO agree that the cultural resource is eligible, then effect determinations will be in accordance with Stipulation II.E.
- c. If the BLM and SHPO do not agree on eligibility, and agreement cannot be reached within 30 days, then the BLM will request a determination of eligibility from the Keeper of the National Register (Keeper), pursuant to 36 CFR 800.4(c)(2) and 36 CFR Part 63. The Keeper's determination will be final.

III. Reporting, Consultation, and Review of Documentation

- A. At the conclusion of the fieldwork described in Stipulation II.D, the Applicant will submit copies of the draft reports and site forms to each BLM State Office for distribution to the appropriate federal and state agencies for review and to tribes who have signed this PA. Each report will be consistent with the appropriate state guidelines and formats including recommendations of eligibility and effect. Reports shall also include appropriate state site inventory forms, other documentation for results of identification of properties of traditional religious and cultural significance to tribes, and recommendations on the historic significance, integrity, and NRHP eligibility of identified cultural properties [36 CFR 800.4(c)].
- B. The applicable federal and state agencies and tribes will have 30 days from receipt of each report to review and provide comments on the initial draft to the lead BLM office. These comments will address adequacy of inventory and reports, the eligibility of properties identified [36 CFR 800.4(c)], and the effects of the Undertaking on any

- cultural resources considered to be historic properties [36 CFR 800.4(d) and 36 CFR 800.5]. Based on the comments received, the BLM may require the Applicant to revise the reports. Any revised reports will be submitted to the appropriate BLM State Office for a 15-day review. BLM will have five days to accept the report prior to submission to the SHPOs.
- C. The Applicant will submit all other outstanding reports, such as addendum reports for variances, mitigation or monitoring, or other reporting actions required under an HPTP, no later than 3 years after the completion of the relevant work element (as described in the HPTP) of the Undertaking.
- D. If the time frames discussed above cannot be met, reviewing offices will notify the lead BLM office main point of contact by email requesting a review extension and providing the justification for the delay. The lead BLM office will determine whether to grant an appropriate extension, not to exceed 30 days.

IV. Tribal Consultation

Through government-to-government consultation with applicable Indian tribes, pursuant to 36 CFR 800.2(c)(2), the BLM and other federal agencies, as appropriate, will make a good faith effort to identify properties that have traditional religious and cultural importance to one or more Indian tribes and to determine whether they are historic properties. Discussion of these properties will be integrated, as applicable, as a separate chapter or appendix, or submitted as a separate report. Ethnographic studies are not required, but may be requested by tribes and any that are completed would become an appendix to the Class III inventory report. Confidentiality concerns expressed by tribes for properties that have traditional religious and cultural importance will be respected and will be protected to the extent allowed by law (see Stipulation VI).

V. Resolution of Adverse Effects

If the BLM determines that the Undertaking will have adverse effects on historic properties, the BLM shall consult with the appropriate SHPOs, Consulting Parties and tribes to develop and evaluate alternatives or modifications to the Undertaking that could avoid, minimize, or mitigate adverse effects on those properties. If there are adverse effects on historic properties, the BLM will ensure state-specific HPTPs are prepared and implemented.

VI. Historic Properties Treatment Plan

- A. Each HPTP will provide specific avoidance, minimization, or mitigation measures, commensurate with the adverse effect of the Undertaking, and to lessen any potential cumulative effects.
1. The Applicant will prepare an HPTP for each state in which historic properties will be affected by the Undertaking. Each HPTP will be prepared in consultation with the appropriate SHPO, Consulting Parties and tribes, and will be consistent with the *Secretary's Standards* and the Advisory Council on Historic Preservation's (ACHP) *Section 106 Archaeology Guidance* (2009), Historic American Buildings Survey (HABS), Historic American Engineering Record (HAER), and Historic American Landscapes Survey (HALS) guidance (<http://www.nps.gov/hdp/>), and appropriate state guidelines.
 2. Each HPTP will list all historic properties that have been identified within the direct APE, including those avoided, by land ownership, by state, and by construction segment of the Undertaking in which it occurs. The plans will identify the specific avoidance, minimization, and mitigation strategies proposed to address the direct, indirect, and cumulative effects of the Undertaking for both individual historic properties and specific groups of historic properties (e.g., archaeological sites, trails, etc.).
 - a. Each plan will identify whether the actions required to implement avoidance, minimization, or mitigation for each historic property must be implemented prior to the authorization of any ground-disturbing activities in a segment (e.g., archaeological data recovery, landscape photography), or will be implemented following authorization of ground-disturbing activities (e.g., historical research, installation of an interpretive kiosk, public education materials, etc.).
 - b. Each plan will include a table listing each historic property including:
 - (1) a distinctive name or number;
 - (2) a brief description of the property;
 - (3) its sequential location in terms of distance and direction from a construction link;
 - (4) the nature or kind of each required treatment measure pertaining to each historic property (e.g., avoidance, minimization, landscape photography, archaeological data recovery, etc.);
 - (5) identification of those corresponding treatment measures, if any, which must be completed prior to authorization of ground-disturbing activities and those that may be completed after such authorization of ground-

disturbance in the area requested by the Applicant for initiation of construction; and

(6) documentation and reporting of proposed treatment and mitigation.

3. Each HPTP will include a Monitoring Plan for implementation of the Undertaking, which may include tribal participation. The Monitoring Plan will be developed as a subsection of the HPTP for implementation during construction, operation, and maintenance. This plan will address monitoring for compliance with the HPTP; monitoring as part of a strategy to avoid, minimize, or mitigate direct, indirect or cumulative adverse effects; and monitoring for inadvertent discoveries, at any time during the Undertaking. All monitoring plans shall identify monitoring objectives and the methods necessary to attain these objectives.
4. Each HPTP will incorporate research designs as needed to guide data recovery and other treatment efforts. Existing research designs included within historic context documents acceptable to the BLM, USFS, and SHPO will be used if BLM/USFS and SHPO agree that they are appropriate to the specific property or group of properties.
5. Other treatment measures for adverse effects may include, but will not be limited to:
 - a. Completion of NRHP nomination forms
 - b. Conservation easements
 - c. HABS, HAER, or HALS documentation
 - d. Acquisition of land containing NHT segments or other historic properties for transfer to public ownership
 - e. Partnerships and funding for public archaeology projects
 - f. Print publication (brochure/book)
 - g. Digital media publication (website/podcast/video)
6. Because each HPTP will be used as a field guide during implementation of the Undertaking, it also will include provisions for the treatment of Inadvertent Discoveries of Cultural Resources and Human Remains.

B. Review and Approval of HPTPs

1. Once each HPTP is completed, the Applicant will provide the appropriate plan to each BLM State Office who will distribute the plan to the applicable federal and state agencies for a 30-day review. If necessary, the Applicant will revise the plans and resubmit them to the BLM within 15 days.

2. The BLM will then provide the HPTPs to the tribes and other Consulting Parties for a 30-day review. All comments will be submitted to the BLM.
3. The BLM will take the comments of the Consulting Parties into account and direct the Applicant to revise the plans, as appropriate. The Applicant will revise and provide new plans to the BLM within 10 days. Any revised HPTP will be provided to Consulting Parties for a second review and comment period, not to exceed 15 days. The BLM will submit the final HPTP to each SHPO for a 15-day review and concurrence.

C. Implementation of HPTPs and Issuance of Notices to Proceed (NTP)

The BLM may issue an NTP for a portion of the Undertaking if the authorized activities will not preclude the BLM's or Applicant's ability to re-site or re-locate other facilities in adjacent portions of the Undertaking to avoid adverse effects to historic properties, or to resolve those adverse effects in accordance with terms of this PA.

D. Operations and Maintenance

The HPTP shall include operations and maintenance to address all activities related to the functioning of the Undertaking after construction and reclamation are completed. These permitted activities are defined in the POD. During operations and maintenance the ROW grant holder will be required to follow all the terms, conditions, and stipulations concerning historic properties which are included in the POD as part of the ROW grant.

1. The HPTP will identify those stipulations necessary to ensure the consideration of historic properties throughout the life of the ROW grant.
2. The BLM will be responsible for ensuring that the stipulations in the BLM ROW grant are enforced on BLM land for the life of the grant. Federal or state agencies issuing a permit for the Undertaking will take responsibility for permit enforcement under their jurisdiction.
3. The HPTP will identify a variance review process for operations and maintenance, to address any changes in procedures that could have an adverse effect on historic properties in the ROW. The Applicant will submit a request for variance review to the BLM for any proposed changes in use of equipment or other changes that may result in ground disturbance outside of the previously surveyed APE.

4. The BLM will consult with applicable land-managing agencies regarding such proposed changes. The BLM will develop a list of operation and maintenance activities that will not be subject to additional NHPA Section 106 review, and will identify the types of activities that will require additional NHPA Section 106 review.
 5. The BLM administration of the ROW grant shall include appropriate BLM cultural resource specialists to participate in ROW grant review and to review compliance with stipulations or changes in procedures that may affect historic properties in the ROW. Coordination with applicable land-managing agencies will occur during the review process.
- E. Upon final acceptance by the BLM and SHPO, each HPTP will be appended to this PA.
- F. The HPTP shall provide for the preparation of reports as called for during the implementation of plan activities, including but not limited to monitoring reports, HABS/HAER/HALS documentation, and archaeological data recovery documentation, if applicable.
- G. The BLM will ensure that the Applicant completes draft and final reports as called for under the implementation of the HPTP. The BLM will send the reports out to the Consulting Parties to this agreement for review as described in Stipulation VI. Review times will be 30 working days unless otherwise noted.

VII. Protection of Confidential Information

All Consulting Parties to this PA agree that, to the extent consistent with Title 54 U.S.C. § 307103 (formerly Section 304 of the NHPA), and the Archaeological Resources Protection Act (ARPA) of 1979 (16 U.S.C. 470aa-mm) Section 9(a), cultural resource data from this project will be treated as confidential by all Consulting Parties and is not to be released to any person, organization, or agency not a Consulting Party to this PA. Duplication or distribution of cultural resource data from this Undertaking by any Consulting Party requires written authorization from the applicable BLM State Director. Confidentiality concerns for properties that have traditional religious and cultural importance to the tribes will be respected and will remain confidential to the fullest extent permitted by law.

VIII. Personnel Training

- A. Prior to conducting personnel training, the Applicant will provide their cultural resource training materials to BLM for a 30-day review. The BLM may request a 15-

day review by the Consulting Parties. Prior to being authorized to work in the APE, all personnel (including contractors, inspectors and monitors) involved in construction, operation, and maintenance of the Undertaking will receive instruction by the Applicant, with BLM oversight, on site avoidance and protection measures, including information on the statutes protecting cultural resources. In addition, sensitivity training regarding sites of importance to tribes and tribal issues in general will be covered. At a minimum, all personnel shall receive in-person training discussing the importance of cultural resources, such as historic trails, and archaeological laws, including penalties for violation. This training program also will apply to personnel hired after the project has started. The Applicant shall maintain records demonstrating that the personnel training described above has been carried out and that all on-site workers have received the training.

- B. If construction occurs outside of the approved ROW, BLM will assess whether to issue a stop-work order while the Applicant and the applicable federal agency provides additional training for personnel in the area.

IX. Discovery of Previously Unidentified Cultural Resources

If potential historic properties are discovered or unanticipated effects occur on known historic properties at any time during the Undertaking, the BLM will implement the Inadvertent Discovery Plan for the applicable state, which will be developed in consultation with the applicable Consulting Parties prior to issuance of any NTP. This plan will be included as an appendix to each HPTP.

X. Discovery of Human Remains

If human remains are discovered at any time during the Undertaking, the BLM will follow the provisions of applicable state and local laws and the Native American Graves Protection and Repatriation Act [NAGPRA (25 U.S.C. § 3001)] of 1990. Procedures for the inadvertent discovery of human remains will be developed in consultation prior to the issuance of any NTP. This plan also will address curation and repatriation. Such procedures will be included as an appendix to the HPTP and will include securing the area, stopping work within a 200-foot radius from the point of discovery and notifying, within 24 hours, the BLM and other appropriate federal or state agencies. Human remains will be left in place, fully protected and treated with dignity and respect following ACHP's Policy Statement on the Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007).

XI. Curation

- A. The BLM shall ensure that curation of the material remains and all associated records resulting from identification and data recovery efforts is completed in accordance with 36 CFR Part 79 and the provisions of NAGPRA (25 U.S.C. § 3001). The Applicant will bear all costs of curation and repatriation. Documentation of the curation of these materials will be provided to the BLM and other land managing agencies, as appropriate, within 60 days of BLM's acceptance of the applicable report. Materials found on federal lands will remain federal property when curated (unless otherwise appropriately repatriated in accordance with federal law).
- B. Archaeological materials collected from private lands pursuant to the implementation of this PA shall be maintained in accordance with 36 CFR Part 79 until all analysis is complete. Private landowners may wish to donate collections from their lands to a museum, university, historical society, or other repository. Otherwise, collections from private lands shall be returned to the landowners within 60 days of acceptance by the applicable SHPO of the final inventory or any mitigation report (as described in the HPTP). The Applicant will provide documentation of the disposition of private collections to the BLM within 15 days of the landowner's receipt or transfer of the collections.

XII. Initiation of Construction Activities

- A. The BLM will authorize treatment and/or surface-disturbing construction activities only after issuance of a federal ROW grant, Special Use Authorization if appropriate, and specific NTP(s) or any other federal or state authorization to the Applicant. NTPs will be issued on a construction segment basis.
- B. Prior to issuance of an NTP for a specific construction link, the BLM shall ensure that implementation of each state's final HPTP is completed to a level acceptable to the BLM for the area requested under the NTP, in consultation with the appropriate SHPO. The implementation will apply to all land in the construction link regardless of ownership. An acceptable level may consist of the following conditions:
 - 1. The construction of the segment will not preclude rerouting of other segments or affiliated ancillary feature locations.
 - 2. The BLM, in consultation with the appropriate SHPO, per Stipulation II.D-E, determines that either:
 - a. No historic properties are present within the APE for that construction segment; or

- b. Historic properties are present within the APE for that construction link, but will not be affected; or
- c. Historic properties are present and will be adversely affected, but mitigation measures identified in the HPTP for that construction segment have been implemented according to V.C.

XIII. Changes in Construction Activities

The BLM and SHPOs will make every effort to expedite review of any changes to construction plans after initiation of construction. If the Applicant proposes changes in the construction ROW or any ancillary areas outside of the APE surveyed for the Undertaking, the Applicant will conduct identification and evaluation of historic properties in accordance with Stipulation II. Results of the inventory report will be handled as follows:

- A. If the inventory results in no cultural resources identified, the Applicant will submit copies of the draft inventory report to the applicable BLM State Office for distribution to the appropriate federal and state agencies for review. These agencies will have 5 days to provide comments on the report to the applicable BLM State Office. If the BLM accepts the findings, the BLM may issue the NTP without SHPO review. If BLM does not accept the findings, the Applicant will revise the report as necessary and resubmit it to the applicable BLM State Office within 5 days. The BLM will send the documentation to the SHPO in the annual report or through whatever mechanism is in place. The report data also will be included in any final report for the Undertaking.
- B. If the inventory results in no historic properties identified, the Applicant will submit copies of the draft inventory report to the applicable BLM State Office for distribution to the appropriate Consulting Parties to this PA. Reviewers will provide any comments to the applicable BLM State Office within 10 days of receipt of the document. Any necessary changes to the report will be made by the Applicant and resubmitted to BLM within 5 working days. The BLM will send the report to the appropriate Consulting Parties for 5 days. The BLM will then send the documentation to the SHPO who will have 15 days to review and comment. The BLM will have 5 days to respond to any SHPO comments. If the SHPO does not respond within the stated timeframe, the BLM will assume SHPO has no objection to the report and concurs with the agency determination/s of eligibility. The BLM may issue the NTP or other applicable authorization to proceed at this point per Stipulation XII.
- C. If the inventory results in historic properties identified, the Applicant will submit copies of the draft inventory report to the applicable BLM State Office to distribute the report, including the potential effects to any historic properties, to the appropriate

Consulting Parties to this PA. Reviewers will provide comments to the applicable BLM State Office within 30 days. Any changes to the report will be made by the Applicant and resubmitted to the appropriate Consulting Parties within 10 days. The BLM will then send the documentation to the SHPO who will have 30 days to review and comment. The BLM will have 10 days to respond to any SHPO comments. If the SHPO does not respond within the stated timeframe, the BLM will assume SHPO has no objection to the report and concurs with the agency determination/s of eligibility and finding of effect. The BLM may issue the NTP or other applicable authorization to proceed at this point per Stipulation XII.

XIV. Financial Security

The Applicant will post a financial security bond approved under the ROW regulations (43 CFR 2800) with the BLM in an amount sufficient to cover all post-fieldwork costs associated with implementing the HPTPs, or other mitigated activities, as negotiated by the Applicant where they contract for services in support of this PA. Such costs may include, but are not limited to treatment; fieldwork; post-field analyses; research and report preparation; interim and summary reports preparation; the curation of documentation and artifact collections in a BLM-approved curation facility; and the repatriation and reburial of any human remains, sacred objects, or objects of cultural patrimony. The Applicant will post a financial security bond prior to BLM issuing an NTP for the construction segment where historic-property treatment is required.

- A. The security bond posted is subject to forfeiture if the Applicant does not complete tasks within the time period established by the treatment selected provided, however, that the BLM and Applicant may agree, in writing, to extend any such time periods. The BLM will notify the Applicant that the security bond is subject to forfeiture and will allow the Applicant 15 days to respond before action is taken to forfeit the security bond.
- B. BLM will release the financial security bond, in whole or in part, as specific tasks are completed and accepted by the BLM.

XV. PA Annual Report and Review

On or before February 1 of each year, until the Signatories and Invited Signatories agree in writing that the terms of this PA have been fulfilled, the Applicant shall prepare and provide an annual report to the BLM detailing how the applicable terms of the PA are being implemented. The BLM shall provide the annual report to all Consulting Parties for a 15 day review. The BLM may then host a conference call with the Consulting Parties to discuss the report. Annual reports shall not contain confidential site location information, per provisions of Stipulation VII.

XVI. Dispute Resolution

- A. Other than the NRHP dispute resolution process identified in Stipulation II: E and E.4.c, should any Consulting Party to this PA object to the manner in which the measures stipulated in this PA are implemented, they shall provide written notice to the BLM of the reason for, and a justification of, the objection. Upon acceptance of such notice, the BLM shall consult for up to 30 days with the Consulting Parties to this PA to resolve the objection. If the BLM determines that the objection cannot be resolved, the BLM shall forward all documentation relevant to the dispute to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP shall either:
1. Provide the BLM with recommendations, which the BLM shall take into account in reaching a final decision regarding the dispute; or
 2. Notify the BLM that it will comment within an additional 30 days, in accordance with 36 CFR 800.7(c)(4). Any ACHP comment provided in response to such a request will be taken into account, and responded to, by the BLM in accordance with 36 CFR 800. 7(c)(4) with reference to the subject of the dispute.
- B. B. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The BLM's responsibility to carry out all actions under this PA that are not the subject of the dispute will remain unchanged.

XVII. Amendment

Any Signatory or Invited Signatory to this PA who signed the PA may request that the PA be amended by informing BLM in writing of the reason for the request and providing the proposed amendment language. The BLM shall notify all Consulting Parties to the PA of the proposed amendment, provide the proposed language and consult to reach agreement within 30 days unless the Signatories and Invited Signatories agree to a longer period of consultation or the party proposing the amendment retracts its proposal. The amendment will be effective on the date a copy signed by all the Signatories and Invited Signatories is filed by the BLM with the ACHP.

XVIII. Termination and Withdrawal

- A. Any of the Signatories and Invited Signatories who have signed this PA may terminate it.

- B. The termination process starts when a Signatory or Invited Signatory who has signed the PA provides written notice to the other Signatories and Invited Signatories of its intent to terminate. Termination shall take effect no less than 30 days after this notification, during which time the Signatories, Invited Signatories, and Concurring Parties shall consult to seek agreement on amendments or any other actions that would address the issues and avoid termination. The notice must explain in detail the reasons for the proposed termination. The PA will be terminated at the end of the 30-day period unless the Signatories and Invited Signatories agree to a longer period of consultation or the party proposing termination retracts its proposal.
- C. In the event this PA is terminated, the BLM shall comply with 36 CFR 800.6 (c)(8) and will take reasonable steps to avoid adverse effects to historic properties until another PA has been executed or will request, take into account, and respond to ACHP comments, in accordance with 36 CFR 800.7 (c)(4). BLM will notify all Consulting Parties to this agreement as to the course of action it will pursue.
- D. An individual SHPO may withdraw from the PA upon written notice to all Signatories and Invited Signatories after having consulted with them for at least 30 days to attempt to find a way to avoid the withdrawal. Upon withdrawal, the BLM and the withdrawing SHPO will comply with NHPA Section 106 in accordance with 36 CFR 800.3 through 800.7 or the execution of an agreement in accordance with 36 CFR 800.14(b). Such NHPA Section 106 compliance will be limited to consideration of effects of the Undertaking solely within the jurisdiction of the withdrawing SHPO. This PA will still remain in effect with regard to the portions of the Undertaking located in the jurisdiction of the SHPOs who have not withdrawn from the PA. If all SHPOs withdraw from the PA, the PA will be considered to be terminated.

XIX. Duration of This PA

- A. This PA will expire if the Undertaking has not been initiated, the BLM ROW grant expires or is withdrawn, or the stipulations of this PA have not been initiated within 10 years from the date of its execution. At such time, and prior to work continuing on the Undertaking, the BLM must either (a) execute a Memorandum of Agreement pursuant to 36 CFR 800.6; execute a PA pursuant to 36 CFR 800.14(b); or request, take into account, and respond to the comments of the ACHP under 36 CFR 800.7. Prior to such time, the BLM may consult with the Consulting Parties to reconsider the terms of the PA and amend it in accordance with Stipulation XVII. The BLM shall notify the Consulting Parties within 30 days as to the course of action the BLM will pursue.
- B. This PA will remain in full force and effect, not to exceed 15 years, unless terminated pursuant to Stipulation XVIII above, another agreement executed for the Undertaking

supersedes it, or the Undertaking itself is cancelled. The BLM, in consultation with the other Signatories and Invited Signatories, will determine whether construction of all aspects of the Undertaking has been completed and that all terms of the PA have been fulfilled in a satisfactory manner. Upon a determination by the BLM that all terms of this PA have been fulfilled in a satisfactory manner, the BLM will notify the Consulting Parties to this PA in writing of the agency's determination. This PA will terminate and have no further force or effect on the day that the BLM so notifies the Consulting Parties to this PA.

By agreement of all Signatories and Invited Signatories, the duration of the PA may be extended through an amendment as per Stipulation XVII.

The BLM will retain responsibility for administering the terms and conditions of the ROW grant pertaining to historic properties for the life of the grant.

XX. General Provisions

- A. **Entirety of Agreement.** This PA, consisting of 49 total pages, represents the entire and integrated agreement among the parties and supersedes all prior negotiations, representations and agreements, whether written or oral, regarding compliance with NHPA Section 106 for the Undertaking.
- B. **Prior Approval.** This PA shall not be binding upon any party unless this PA has been reduced to writing before performance begins, as described under the terms of this PA, and unless the PA is approved as to form by the appropriate State Attorney General or his or her representative.
- C. **Severability.** Should any portion of this PA be judicially determined to be illegal or unenforceable, the remainder of the PA shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.
- D. **Sovereign Immunity.** No state, SHPO, or tribal government waives their sovereign or governmental immunity by entering into this PA and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of the PA.
- E. **Indemnification.** Each Signatory to this PA shall assume the risk of any liability arising from its own conduct. Each Signatory agrees they are not obligated to insure, defend, or indemnify the other Signatories to this PA.
- F. **Counterparts.** This PA may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the

same instrument. The BLM will distribute copies of all pages to all Consulting Parties once the PA is executed in full.

- G. All notices, requests, and other communications required or permitted hereunder between the Consulting Parties shall be in writing. All such notices, requests, and other communications shall be given (i) by delivery in person (ii) by a next day courier service, (iii) by first class, registered or certified mail, postage prepaid, or (iv) by electronic mail to the address of the Consulting Party as such party may specify in writing. All such notices, requests, and other communications shall be deemed to have occurred and be effective upon (i) receipt by the party to which notice is given, or (ii) the fifth (5th) day after having been sent, whichever occurs first.

EXECUTION of this PA and subsequent implementation of its terms shall evidence that the BLM and the federal agencies have taken into account the effects of the Undertaking on historic properties and afforded the ACHP an opportunity to comment on it in compliance with NHPA Section 106.

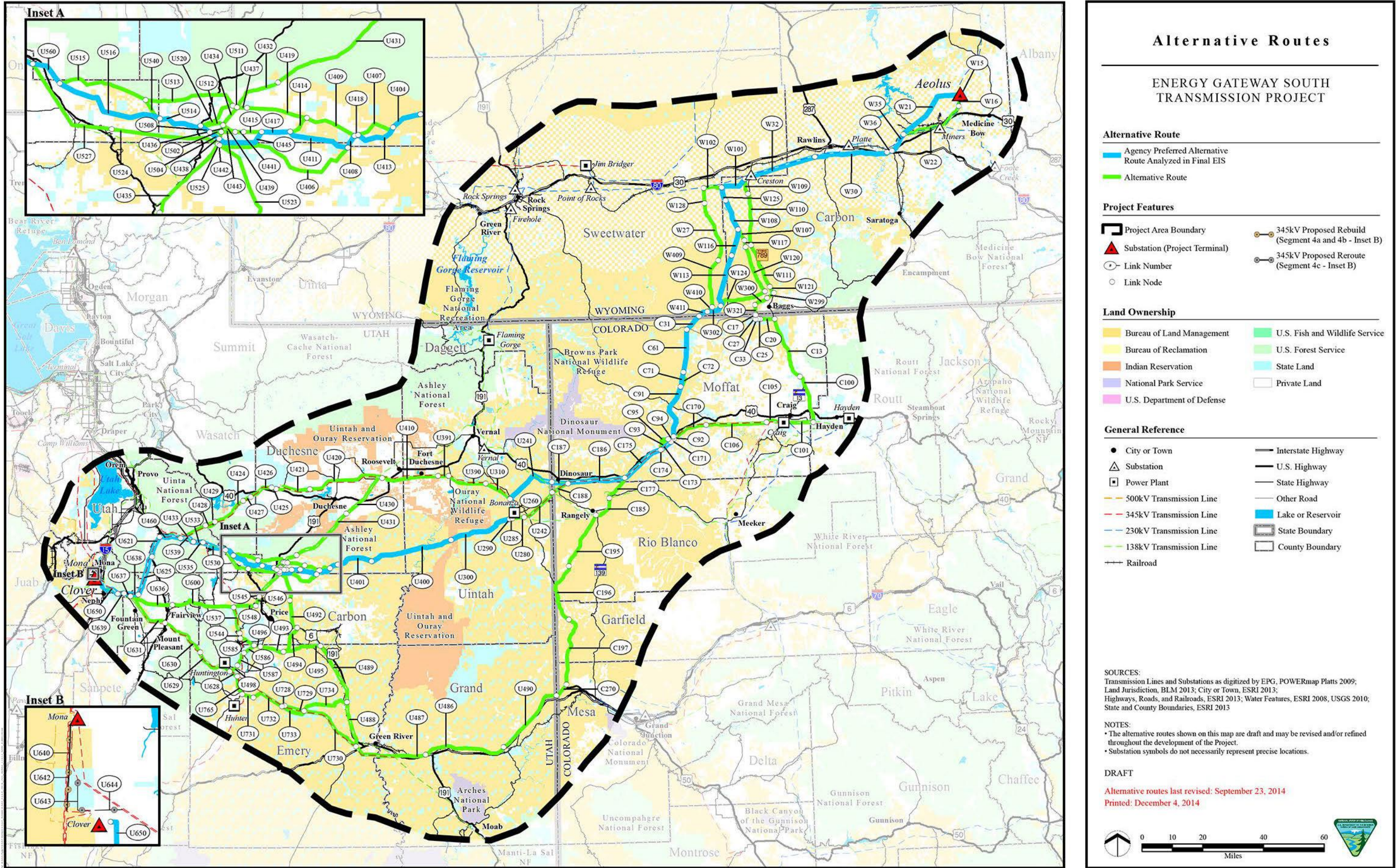
SIGNATORIES (reserved)

INVITED SIGNATORIES (reserved)

CONCURRING PARTIES (reserved)

APPENDIX A

MAP OF PROPOSED UNDERTAKING AND ALTERNATIVES



APPENDIX B**DEFINITIONS**

1. *Adverse effect*. When an Undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association, consideration will be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register of Historic Places (National Register). Adverse effects may include reasonably foreseeable effects caused by the Undertaking that may occur later in time, be farther removed in distance or be cumulative (36 CFR 800.5(a)(1)). Adverse effects on historic properties include, but are not limited to:
 - Physical destruction of or damage to all or part of the property;
 - Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, which is not consistent with the Secretary of the Interior's Professional Standards for the Treatment of Historic Properties (36 CFR Part 68) and applicable guidelines;
 - Removal of the property from its historic location;
 - Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;
 - Introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features;
 - Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and
 - Transfer, lease, or sale of property out of federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.
2. *Area of Potential Effect (APE)*. The geographic area or areas within which an Undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist (36 CFR 800.16(d)).
3. *Class III Inventory*. A Class III inventory is an intensive, 100-percent pedestrian field survey to determine the distribution, number, location, and condition of historic properties in an area in order to determine effects and potential mitigation methods. A Class III inventory is used when it is necessary to know precisely what historic properties exist in a given area or when information sufficient for later evaluation and treatment decisions is needed on individual historic properties (Bureau of Land Management (BLM) Manual 8110).

4. Concurring Parties. Concurring Parties are Consulting Parties who have expressly agreed by signing this Programmatic Agreement (PA) to participate in the consultations and concur with the terms of the agreement for purposes of meeting the goals of historic preservation. Concurring Parties have only agreed to participate in the consultation process as outlined in the PA; it is understood that their participation does not necessarily imply an endorsement of the project in part or as a whole. Concurring Parties who refuse to concur in the agreement do not invalidate the agreement (36 CFR 800.6(c)(3)).
5. Consulting Parties. All required Signatories, Invited Signatories, and Concurring Parties.
6. Construction. The construction phase begins when the BLM has issued a right-of-way (ROW) grant to the proponent for the Undertaking. It includes all activities related to construction of the undertaking, including activities required to be completed in advance of construction, as well as all activities completed in order to reclaim lands disturbed during construction for 2 years after construction is completed or until cost recovery agreements related to construction expire.
7. Cultural resource. A definite location of human activity, occupation, or use identifiable through field inventory (survey), historical documentation, or oral evidence. The term includes archaeological, historic, or architectural sites, structures, or places with important public and scientific uses, and may include definite locations (sites or places) of traditional cultural or religious importance to specified social and/or cultural groups (traditional cultural property). Cultural resources are concrete, material places and things that are located, classified, ranked, and managed through the system of identifying, protecting, and using for public benefit described in the BLM Manual 8100. They may be, but are not necessarily, eligible for listing in the National Register.
8. Cumulative effects. The impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes other actions (40 CFR 1508.7)
9. Day(s). For the calculation of time periods under this PA, “days” means calendar days. Any time period specified in this PA that ends on a weekend or a state or federal holiday is extended until the close of the following business day.
10. Effect. An alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register (36 CFR 800.16(i)).
11. Historic property. Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes artifacts,

records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria (36 CFR 800.16(1)(1)). The phrase 'eligible for inclusion in the National Register' is used to refer to both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria as listed in 36 CFR 60.4.

12. Historic Property(ies) Treatment Plan. A document that details the procedures and techniques for resolving adverse effects to historic properties within the APE through avoidance, minimization, and/or mitigation. At the end of the Project, there would be a final report documenting all treatment completed in accordance with the HPTP.
13. Literature Review. A "literature review," "existing data review," "file search," or "records check" is generally the brief first step before initiating a field survey. Ideally, completing an existing data review means consulting the automated database of the State Historic Preservation Offices (SHPOs), as well as the BLM or U.S. Forest Service (USFS) office records. The literature review provides information regarding whether any survey has been conducted and any cultural properties have been recorded within or near the project location.
14. Monitoring. Actions performed to ensure compliance with the terms, conditions, and stipulations of a grant. Actions include inspection, construction, operation, maintenance, and termination of permanent or temporarily facilities and protection and rehabilitation activities until the right-of-way (ROW) holder completes rehabilitation of the ROW and the BLM approves it. Monitoring for cultural resources may have different objectives depending on the phase of the project.
15. National Historic Landmark (NHL). A district, site, building, structure or object, in public or private ownership, judged by the Secretary of the Interior to possess national significance in American history, archeology, architecture, engineering and culture, and so designated (36 CFR 65.3(h)).
16. National Historic Trail (NHT). A trail or route designated by Congress as a National Historic Trail under the National Trails System Act of 1968 as amended. To qualify for designation as a national historic trail, a trail or route must be established by historic use and be historically significant as a result of that use; be of national significance; and have significant potential for public recreational use or historical interest based on historic interpretation and appreciation. Generally, they are extended trails of 100 or more miles in length that follow as closely as possible and practicable the original trails or routes of travel of national historical significance. National historic trails have as their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment.

17. Notice to Proceed. A written authorization by the lead federal agency that allows the ROW holder to initiate actions under the ROW grant. The lead federal agency can issue separate notices to proceed if the project involves distinct work phases and/or locations. Each notice to proceed will specify the nature of work, location, and dates to be authorized.
18. Operations and Maintenance. Activities associated with operation and maintenance of the approved ROW grant over the life of the ROW grant. This includes all activities related to the functioning of the Undertaking after construction and reclamation are completed and prior to any activities related to decommissioning of the Undertaking, per Stipulation XII. Activities during this time are generally infrequent, predictable, and routine. Any actions not specifically approved in the ROW grant, such as changes in equipment used or actions outside the ROW require approval of the BLM.
19. Plan of Action. A document included in the HPTP that establishes procedures for ensuring the proper treatment of Native American remains and related grave goods encountered on federal lands pursuant to 43 CFR § 10.
20. Plan of Development (POD). A plan of development includes the detailed construction, operation, rehabilitation, and environmental protection plan of the project. The project Applicant completes the POD, which is reviewed by the land-managing agencies.
21. Property of traditional religious and cultural importance. A property that is eligible for the National Register because of traditional religious and cultural importance to an Indian tribe. A 1992 amendment to the National Historic Preservation Act (NHPA, 54 U.S.C. § 306108 [as recodified]) directs that properties of traditional religious and cultural importance to an Indian tribe may be determined to be eligible for inclusion on the National Register and that, in carrying out its responsibilities under Section 106 of the Act, a federal agency shall consult with any Indian tribe that attaches religious and cultural importance to such properties. This term also may appear as “properties of religious and cultural significance,” “properties of traditional religious and cultural significance,” “properties of cultural or religious importance,” or “properties of religious or cultural importance.”
22. Reclamation. The process of restoring lands disturbed during construction to, or as close to as practicable, their pre-construction condition, generally involving restoration of vegetation, soils and topography. Reclamation processes and practices are described in the POD and generally are to be completed no later than 2 years after construction is completed.
23. Record of Decision (ROD). The public record made by the agency at the time of its decision which states what the decision was, identifies all alternatives considered by the agency in reaching its decision, specifies the alternative which was considered to be environmentally preferable, and states whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for

any mitigation (40 CFR Part 1505.2). Until an agency issues a record of decision, no action concerning the proposal shall be taken that would (1) have an adverse environmental impact or (2) limit the choice of reasonable alternatives (40 CFR Part 1506.1).

24. Segment. Any of the parts into which something (i.e., transmission line) is separated; section.
25. Setting assessment. A methodology devised to determine the effects of an undertaking to those historic properties for which setting, feeling and/or association contribute to National Register eligibility.
26. Signatories. *Required signatories* execute, may amend, and may terminate this agreement. *Invited signatories* have the same rights to amend and terminate the agreement once they sign it per 36 CFR 800.6(c)(2).
27. Targeted Field Inventory. A targeted field inventory is a focused or special-purpose information tool that is less systematic, less intensive, less complete, or otherwise does not meet Class III inventory standards. Reconnaissance surveys may be used, among other purposes, for locating particular types of cultural resources, such as those for which setting, feeling, and association are important to their integrity. Fieldwork may be targeted to specific areas or types of locations in which such properties may exist, or to examine known cultural resources to determine whether they are significant and whether setting, feeling and/or association may be important to their significance.
28. Traditional cultural property (TCP). A property that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history and (b) are important in maintaining the continuing cultural identity of the community (National Register Bulletin 38). Although any cultural or community group may identify relevant traditional cultural properties, the regulations at 36 CFR 800 specifically require identification and evaluation of properties of traditional religious and cultural importance to Indian tribes.
29. Variance. A written authorization from the responsible agency permitting construction in a manner that departs from the specific requirements of the POD.

APPENDIX C**PROCEDURES FOR DETERMINING EFFECTS
ON HISTORIC PROPERTIES FOR WHICH SETTING, FEELING, OR ASSOCIATION
ARE ASPECTS OF INTEGRITY**

1.0 INTRODUCTION

This methodology defines the procedures for identifying and evaluating effects from the Energy Gateway South Transmission Project (Undertaking) to historic properties within the indirect effects Area of Potential Effect (APE) for which the qualities of setting, feeling, or association are aspects of integrity and thereby characteristics that qualify these properties for eligibility for listing on the National Register of Historic Places (NRHP). The Bureau of Land Management (BLM), in consultation with the Advisory Council on Historic Preservation (ACHP); the Wyoming, Colorado, and Utah State Historic Preservation Officers (SHPOs); and Consulting Parties to the Programmatic Agreement (PA), has compiled these procedures, pursuant to Stipulations I.A.2. and II.E. of the PA.

The Applicant will produce separate reports that identify effects to setting, feeling or association for historic properties in Wyoming, Colorado, and Utah. The goal will be to include these reports as stand-alone addenda to the Class III inventory reports for each state. Each report will meet the reporting requirements of the BLM and the SHPO from each respective state.

The methodology involves four components. Within the APE for Indirect Effects (indirect effects APE) defined in Stipulation I.A.2. of the PA: (1) identify historic properties from which the Undertaking can be seen and for which setting, feeling, or association is an aspect of integrity; (2) complete field evaluations of the integrity of these historic properties; (3) assess effects on setting, feeling, or association of these historic properties; and (4) resolve adverse effects. Complete Components 1, 2 and 3 and include results in the Class III inventory report for the Undertaking; complete Component 4 and include in the Historic Properties Treatment Plan (HPTP). Each component of this methodology is addressed below. In addition to the following detailed description of each component, Exhibit 1 to this appendix is a field implementation guide intended to assist field personnel in implementing these procedures.

1.1 Definitions and Eligibility Criteria

For the purposes of this methodology, cultural resources are defined as archaeological, historical, or architectural sites, districts, buildings, structures, places, and objects that have been documented on the official site forms used by the SHPOs in the states of Wyoming, Colorado, and Utah; or listed on the NRHP or state registers of historic places; and additionally those properties identified by Consulting Parties in Stipulation II.D.2.a of the PA. Cultural resources include sites known to be important to tribes; for example, rock art, rock cairns, rock alignments, and stone circles. While cultural resources encompass definite locations (sites or places) of

traditional cultural or religious significance to specified social and/or cultural groups (including traditional cultural properties), as in the definition in Appendix B of the PA, and are most readily identified by Consulting Parties from these groups bringing them forward, per Stipulation II.D.2.a of the PA.

Cultural resources eligible for listing on the NRHP are referred to as “historic properties.” Historic properties must demonstrate importance in American history, architecture, archaeology, engineering, or culture. A historic property is considered significant in these categories if it possesses integrity of location, design, setting, materials, workmanship, feeling, and association and meets one or more of the following criteria:

- (a) is associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) is associated with the lives of persons significant in our past; or
- (c) embodies the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possesses high artistic values, or that represents a significant and distinguishable entity whose components may lack individual distinction; or
- (d) has yielded, or may be likely to yield, information important in prehistory or history (36 CFR 60.4).

1.2 Integrity

Integrity is defined as “the ability of a property to convey its own significance” (National Park Service [NPS] 1995:44). According to NRHP guidelines, the evaluation of integrity must always be grounded “in an understanding of a property’s physical features and how they relate to its significance” (NPS 1995:44). Setting, feeling, and association (also defined in NPS 1995:44-45) are particularly sensitive to visual, audible, and atmospheric effects and convey the property’s historic character.

- **Setting** is the physical environment of a historic property. Setting encompasses the physical features of each historic property, in which the property played its historic role. It includes natural features such as topography and vegetation, and man-made features that are part of the property and the surrounding landscape.
- **Feeling** is a property’s expression of the aesthetic or historic sense of a particular period of time. Do the physical features taken together convey the property’s historic character? Does the property “feel” like it did during its historic period? Are the sights and sounds the same? Can you imagine the property during its period of significance? Examine the potential modern intrusions which may distract from the historic features and character of the property.

- **Association** is the direct link between an important historic event or person and a historic property (NPS 1995:44-45). Is there a direct link between the historic person or event and the historic property? Examine whether the place at which the event or activity occurred is sufficiently intact to convey the historic link or relationship to an observer.

All other terms not defined within this document are as defined in the PA.

1.3 Area of Potential Effect for Indirect Effects (Indirect Effects APE)

As described in Stipulation I. A. 2 of the PA, the indirect effects APE extends to the visual horizon or for 3 miles on either side of the transmission line centerline, whichever is closer. Where the indirect effects APE includes traditional cultural properties, properties of traditional religious and cultural importance, National Historic Landmarks, National Historic Trails, and other exceptional classes of historic properties for which setting, feeling, or association contributes to eligibility, additional analyses may be required and the indirect APE may be modified accordingly, following procedures described in I.B of the PA. Consulting Parties may identify cultural resources to consider in this analysis beyond the 3 mile indirect effects APE.

2.0 INVENTORY HISTORIC PROPERTIES FOR WHICH SETTING, FEELING OR ASSOCIATION IS IMPORTANT TO INTEGRITY

Identifying historic properties within the indirect effects APE for which setting, feeling, or association may be important to their integrity involves a two-step approach: (1) conducting a GIS viewshed analysis to identify areas in the indirect effects APE from which the Undertaking is visible and (2) compiling a list of historic properties within the potentially visible portion of the indirect effects APE for which setting, feeling, or association is anticipated to be an important quality of integrity. This two-step viewshed analysis screening approach effectively eliminates historic properties that are located within the indirect effects APE but have no view of the Undertaking or for which setting, feeling, or association is not an important quality of integrity. The NRHP eligibility screening eliminates cultural resources that do not meet the criteria for eligibility as set forth in the NRHP. The details of each step are discussed below.

2.1 Viewshed Analysis Screening

The BLM will require the Applicant to conduct a viewshed (seen-unseen) analysis (using geographic information system [GIS] technology) to generate a viewshed that represents the area of the Undertaking (especially transmission line towers) visible within the indirect effects APE. The Undertaking may be visible because of anticipated (1) landform modifications that are necessary to prepare a right-of-way for construction, (2) the removal of vegetation to construct and maintain a facility, and (3) the introduction of new above-ground elements into the landscape. Conduct the GIS viewshed analysis screening using the best and most current information available about these visibility factors at the time work begins for this report. Eliminate from further consideration all portions of the indirect effects APE from which the Undertaking is not visible.

2.2 NRHP Eligibility Screening

Within the visible portion of the indirect effects APE defined in 2.1, identify historic properties for which setting, feeling, or association contributes to integrity, based upon NRHP evaluations. Use existing cultural records databases at SHPO and federal land-management agencies to identify the pool of historic properties eligible under Criteria A, B, and/or C that fall within the indirect APE and that may be affected by the Undertaking. If eligibility criteria are not available or are incomplete in electronic databases, site types may be used to search within electronic databases for sites that are likely to be eligible under A, B, and/or C. For example, “historic structure” may be a starting place to search for historic properties eligible under A, B, and/or C without having to go through every paper site form to find these sites.

Include in this pool certain types of historic properties eligible under Criterion D and known to be important to tribes or other Consulting Parties, such as rock art, cairns, rock alignments or stone circles. The Consulting Parties are encouraged to define these kinds of sites, and also any specific sites that should be included, within 60 days after the Record of Decision (ROD) is signed, per Stipulation II.D.2.a of the PA. The BLM, in consultation with other involved land managing agencies and the applicable SHPO, may include historic properties eligible under Criterion D at its discretion. Along with those sites brought forward by Consulting Parties, which may need to be evaluated for National Register eligibility, the list of historic properties will include traditional cultural properties, properties of traditional religious and cultural importance, National Historic Landmarks, National Historic Trails, and sites identified as sacred or respected places during tribal consultation. Tribally sensitive information will not be shared with other Consulting Parties.

The focus of this identification effort is on historic properties likely to be determined eligible under criteria A, B, or C. Place high priority on areas of importance identified by Consulting Parties. Conversely, Consulting Parties should take care to identify places of importance to them in the indirect effects APE per Stipulation III.D.2.a. of the PA. Examples of properties likely to be determined eligible may include named roads or other named features. Examples of properties unlikely to be determined eligible may include unnamed roads and trails or other unnamed features, historic linear utilities (e.g., transmission or telegraph lines) recorded as historic sites, and historic mines or industrial sites where setting is unlikely to contribute to integrity.

Screening for Site Type: As a screening measure, the BLM, in consultation with the Consulting Parties, may define site types for which setting, feeling, or association are important to integrity, and may likewise define site types for which setting, feeling, or association are not important to integrity. In conjunction, site types for which audible or atmospheric effects are not important may be defined. The Applicant may propose definitions of such site types to the BLM at the beginning of the assessment. Describe these definitions in the report and remove historic properties screened out through this process from the list of historic properties to visit in the field.

Screening for Overall Integrity: In some instances, historic properties have been entirely destroyed or compromised to the extent that the site no longer meets the criteria for listing in the NRHP. If lack of integrity can be ascertained during the inventory process, these “historic properties” are no longer eligible and can be removed from the list of historic properties to visit in the field.

Screening for Setting, Feeling, or Association: If the identification of the historic property’s integrity of setting, feeling, or association has not been included in available documentation, the BLM in consultation with SHPOs, the Consulting Party who brought forward the historic property, and any other appropriate land-managing agency will determine the importance of these aspects of integrity to the historic property. This determination also will apply to places brought forward by Consulting Parties through Stipulation II.D.2.a. of the PA, which may not be present in SHPO or agency site files. Where possible, this determination will be made prior to completion of the field inventory. The BLM will share any such determinations with all Consulting Parties as part of the documentation for the Undertaking.

Access to Private Land: The Applicant will demonstrate a good-faith effort to acquire access to visit historic properties on private land beyond the direct effects APE. Historic properties on private land where access cannot be obtained for fieldwork will be assessed remotely.

Consideration of Audible and Atmospheric Effects: Identify places where construction activities will be longer in duration, or more extensive in scope, or where they may have more than typical audible and atmospheric effects. These “intensive construction locales” may include construction staging areas, areas prone to excessive noise or dust, or helicopter overflight areas near historic properties of concern for these indirect effects. In addition to the use of reference points for proposed transmission-line-structure locations to measure visual effects, include the locations of such places as reference places for assessing audible and atmospheric effects.

Geodatabase: Compile a geodatabase of all historic properties identified at the end of the inventory process in Sections 2.1 and 2.2 above (including historic properties identified during Class III inventories conducted for this Undertaking). This database will include the following information in tabular format: site location, Smithsonian site number (if available), source of the information, land ownership, site description, NRHP evaluation and nominating criteria, and additional reasons for inclusion (e.g., National Historic Trails, sacred sites, sites brought forward by Consulting Parties). Tribally sensitive information and site location information for sensitive sites will not be shared with other Consulting Parties.

GIS Screening in the Office: To verify that the Undertaking has an effect on the historic properties in the geodatabase prior to fieldwork, employ GIS methods in the office for visualizing features of the Undertaking such as using simulation analysis, as available through Google Earth “street view.” Using GIS in the office, assign a Cultural Key Observation Point (CKOP) to the center of each historic property in the geodatabase, and then conduct a GIS analysis of the Undertaking’s visibility using those CKOPs, as measured to the nearest reference reference point for proposed transmission-line-structure location(s) or intensive construction

locale. The analysis should result in a simulated view of the landscape from each CKOP with the Undertaking in it. The agency archaeologist(s) and the Applicant will review these simulated views before going to the field so that they can identify historic properties where the effects of the Undertaking are clearly so minor that further inventory is not necessary. In the report and in the geodatabase, list historic properties dropped from further analysis because of no or very minor (no adverse) effects as identified through this process.

Simulation of Undertaking: Based on the GIS screening in the office, produce simulated images that show the anticipated Undertaking from each CKOP. Where field inventory is necessary, take these images to the field for reference, to help field crews visualize where the Undertaking will be located in relation to each historic property that will be visited.

2.3 List of Historic Properties for Field Evaluation

Historic properties that remain on the list after the viewshed analysis screening (Section 2.1 above) and NRHP eligibility screening (Section 2.2 above) are those for which setting, feeling, or association has been identified as important to their integrity. Schedule the tasks involved in inventorying and evaluating these properties with the goal of including the completed report as an addendum to the Class III inventory report. Next, assess potential visual, audible, or atmospheric effects from the Undertaking on these historic properties in the field.

3.0 FIELD EVALUATIONS

Complete the following analysis on historic properties identified for field inventory as a result of the screening done during the inventory stage (Beck et al 2012; BLM 2006, 2013a and b, 2014; Delaware State Historic Preservation Office 2003). Consult the National Register Bulletin's *How to Apply the National Register Criteria for Evaluation* (National Park Service [NPS] 1995) as the primary reference to assess setting, feeling, or association as they apply to eligibility and integrity. First, collect photographic data from each potentially affected historic property to document effect recommendations and, secondly, assess the effects on setting, feeling, or association using the attributes described below.

3.1 Overall Integrity Prior to the Undertaking

In the field, record and evaluate the National Register eligibility of cultural resources identified by Consulting Parties through Stipulation II.D.2.a. of the PA if they have not been previously recorded in SHPO site files and if BLM's review of the screening process under Section 2.0 above indicates that they need to be recorded. Include in eligibility recommendations an assessment of site integrity with emphasis on setting, feeling, and association. Document the rationale for eligibility recommendations in the report and on state site forms for these newly recorded sites, and include the site forms with the report.

If the field visit shows that a historic property has been destroyed or compromised to the extent that the historic property no longer meets the criteria for eligibility, document the site's present

condition with a site-form addendum or a site-update form as required by the applicable SHPO; prepare and submit this documentation with the report. Evaluate whether historic properties that have been compromised but not destroyed since their last recording retain NRHP eligibility, with an emphasis on integrity of setting, feeling, and association. If not, eliminate these sites from further consideration, and document the “not eligible” recommendation in the report. No further assessment is required.

3.2 Photographic Data Collection

3.2.1 Establish Cultural Key Observation Points and Photograph Undertaking

At each historic property identified in Section 3.1 that is visited in the field and that retains integrity, establish at least one CKOP with a representative view of the Undertaking. Take sufficient photographs from the CKOP(s) at each historic property to document the view of the Undertaking from the CKOP. If a historic property is linear or large, or if there are several important features at the property, more than one CKOP may be needed. Position the camera at each CKOP to capture the viewshed from the historic property facing the proposed transmission-line structure(s) or intensive construction locale. In addition, take photographs in the four opposite or perpendicular directions from each CKOP that best demonstrate the existing setting in relation to the Undertaking. Record the camera height and aspect and the global positioning system (GPS) location for each CKOP. Use an appropriate lens and the same model of camera and camera lens, or cameras and lenses with the same resolution and image quality at all CKOPs. Note in the report the camera and lens model used.

3.2.2 Visual Modeling and Simulations

After fieldwork, superimpose all visible and proposed components of the Undertaking onto a representative image or images from each historic property. If visual simulations are not effective or obtainable, GIS modelling may be used. Simulations will be to scale in proper geographic locations and with appropriate component elevations and heights. The result of these simulations or models will be a graphical illustration of the potential visual impacts of the Undertaking on each potentially affected historic property.

The visual simulations or models document the visibility of the Undertaking from the historic property; include them in the report. Complete the assessment described in Section 3.3 below in the field, at the historic property and also consider effects from atmospheric or audible elements at historic properties near intensive construction locales in the field.

3.3 Analyzing Effects on Setting, Feeling or Association

Systematically identify and analyze effects on the integrity of setting, feeling, and association at each historic property, as assessed in the field and documented with with photographs, visual simulations, and models. Employ the following criteria to describe the effects of the Undertaking on each historic property and document the results for each historic property. If possible, an

agency archaeologist should be in the field with the cultural resource consultant so that effect recommendations can be made jointly.

Integrity of Setting, Feeling, or Association

For the assessment of integrity, the setting, feeling, and association of the historic property are the main concerns. Assess the historic property's integrity of setting, feeling, and association considering the simulations of the Undertaking; i.e., assuming the Undertaking is in place, as follows:

High. The historic property retains its integrity. The introduction of the Undertaking leaves the setting, feeling, and association intact and relatively untouched.

Low. The historic property retains few aspects of integrity. The introduction of the Undertaking leaves the setting, feeling, and association severely compromised or lacking in the historic property's ability to convey its significance.

Distance

Distance is the actual distance between the historic property and the Undertaking. Because areas that are closer potentially have a greater effect on the observer, they draw greater attention than areas farther away. Using GIS measurements record the distance from each CKOP to the closest visible reference tower or intensive construction locale of the Undertaking. In the field, record the number of towers visible from each CKOP.

Contrast

Assess contrast by comparing the Undertaking features with the major elements in the existing setting, including topography, vegetation, and man-made features. Use the basic design elements of form, line, color, and texture to make this comparison and to describe the visual contrast anticipated to be created by the Undertaking. Follow the guidelines in BLM's Visual Resource Contrast Rating Handbook H-8431-1 for making the visual contrast rating and use the Visual Contrast Rating Worksheet in the current Wyoming protocol Appendix C (BLM 2014a); record the date and time of day of the rating. If possible, complete the visual contrast rating at the time of day and year and under light and vegetation conditions that are representative of when most people are likely to see the Undertaking from the historic property. Append the Visual Contrast Rating Worksheets for each historic property to the site form.

No Contrast. The undertaking cannot be seen at all.

Weak Visual Contrast. The elements of the Undertaking, or portions of the elements, can be seen but will not dominate the setting or attract the attention of the casual observer.

Moderate Contrast. The elements of the Undertaking tend to stand out in the setting.

Strong Contrast. The elements of the Undertaking clearly dominate the setting.

Cumulative Effects

For the purposes of this document and paraphrasing the National Environmental Policy Act definition (40 CFR 1508.7), cumulative effects on historic properties are the effects that result from the incremental impact of the Undertaking when added to other past, present and reasonably foreseeable future undertakings regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. Assess cumulative effects as follows in relation to past, present and reasonably foreseeable future undertakings:

Project Compatible. Multiple or large industrial features or developments have appeared in the surrounding landscape. These features dominate the setting, feeling and association; the Undertaking does not create a striking contrast.

Project Moderately Compatible. Single or small industrial features or developments have appeared in the surrounding landscape. These other features are visible on the landscape but the Undertaking dominates the setting, feeling, and association.

Project Incompatible. No other industrial or developmental features appear in the surrounding landscape. The Undertaking creates a striking contrast that is incompatible with the setting, feeling, and association.

Results of Analysis

Support recommendations regarding effects on the setting, feeling, and association of each historic property in the report with photographs from CKOPs, showing visual simulations of the Undertaking and analysis of the attributes described above using forms or other means of record keeping. Submit these records, along with site form updates as required, as an appendix to the report; they eventually will be integrated into SHPO cultural resources site files.

4.0 ASSESSMENT OF EFFECTS ON SETTING, FEELING, OR ASSOCIATION

Adverse effects on historic properties may occur from a “change of the character of the property’s use or of physical features within the property’s setting that contribute to its historic significance (36 CFR 800.5(a)(2)(iv),” including “visual, atmospheric, or audible intrusions” (Advisory Council on Historic Preservation 2014). The primary question to be addressed is “can the setting, feeling or association of the property continue to effectively convey its historic significance despite the effect of the Undertaking?”

Planning the Undertaking provides the opportunity to avoid and minimize effects on historic properties. Avoidance is the preferred strategy for eliminating effects on historic properties. Avoidance methods may include, but are not limited to, “screening” the transmission line by moving it behind a hill, moving transmission-line structure locations, and realigning proposed access routes. Minimizing adverse effects may include camouflaging or reducing the reflective qualities of materials used in construction; feathering, tapering, or selective planting of native

vegetation along cleared areas; and using existing roads as access roads, as outlined in the Draft Environmental Impact Statement for the Undertaking (BLM 2014b).

4.1 Recommendation of Adverse Effect

Under 36 CFR 800.5(a)(1), an adverse effect is found when an undertaking alters “directly or indirectly, any of the characteristics of a historic property that qualify it for inclusion in the NRHP in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association.”

4.2 Recommendation of No Adverse Effect

An effect on setting, feeling, or association, whether direct or indirect or a combination of the two, does not automatically call for an “Adverse Effect” recommendation. Under 36 CFR 800.5(b)(3), if an effect caused by the Undertaking does not meet the criteria for adverse effect in 36 CFR 800.5(a)(1) or the undertaking is modified or conditions are imposed, so the adverse effect criteria are not met, then a recommendation of “no adverse effect” is warranted. In other words, the effect may not compromise the integrity of the historic property to such an extent that it diminishes said integrity or causes an adverse effect.

4.3 Recommendation of No Effect

A recommendation of “No Effect” means that the undertaking cannot be seen or heard from the historic property or its effects on the integrity of the historic property are so minor as to be negligible.

5.0 RESOLUTION OF ADVERSE EFFECTS

As outlined in the PA at Stipulation VII., a HPTP will be prepared after the ROD is signed, the Undertaking’s footprint is finalized, and the Class III inventory report is completed. All historic properties that will be adversely affected by the Undertaking will be reviewed and addressed individually within the HPTP. Include recommendations for minimizing adverse effects on setting, feeling, and association in the report and in the HPTP.

The avoidance and minimization measures described in Section 4.0 may not be viable options in all cases of adverse effects on setting, feeling and association. Where on-site mitigation of visual effects cannot be achieved, develop alternative mitigation measures following the process spelled out in the PA, Stipulation VII.A.5. and include them in the HPTP.

6.0 POST-CONSTRUCTION RE-EVALUATION

After construction is complete, revisit each historic property evaluated in the field prior to construction, re-photograph it, and re-evaluate its integrity and the effects of the Undertaking.

Describe whether construction impacts are likely to be temporary or permanent. Report pre- and post-construction integrity and effect evaluations as a stand-alone report required by the HPTP.

7.0 REVISIONS TO PROCEDURES

Revisions to the procedures described above may be proposed and accepted through review by the BLM and the Consulting Parties without amendment of the PA.

8.0 REFERENCES

Advisory Council on Historic Preservation

2014 Section 106 Regulations, Flow Chart, Explanatory Material. Accessed online at:
<http://www.achp.gov/flowexplain.html>.

2004 36 CFR Part 800 – Protection of Historic Properties. Accessed online at:
<http://www.achp.gov/regs-rev04.pdf>.

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2012 Assessing the Visual Effects of Wind Generation Facilities on Historic Properties for National Historic Preservation Act Consultation. SWCA, Inc., Salt Lake City, Utah. Poster presented at the American Wind Energy Association's WINDPOWER conference, Atlanta.

Bureau of Land Management

2013a Methodology for Assessing Visual Effects to Historic Properties Along the Proposed Sigurd to Red Butte No. 2 – 345V Transmission Project. On file at the BLM Cedar City Field Office, Cedar City, Utah.

2014a Appendix C Guidelines for Determination of Visual Effects of an Undertaking on the Integrity of a Historic Setting in *Protocol between the Wyoming BLM State Director and the Wyoming State Historic Preservation Officer*. Accessed online at:
http://www.blm.gov/pgdata/etc/medialib/blm/wy/programs/cultural/protocol.Par.9857.File.dat/2006app_c.pdf.

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2014b Handbook H-8431 – Visual Resource Contrast Rating. Accessed online at:
http://www.blm.gov/style/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.79462.File.dat/8431.pdf.

Delaware State Historic Preservation Office

2003 *Assessing Visual Effects on Historic Properties*. Delaware State Historic Preservation Office, Dover, Delaware. Accessed online at:
<http://history.delaware.gov/pdfs/visualeffects.pdf>.

National Park Service

1995 *How to Apply the National Register Criteria for Evaluation*. National Park Service, Washington, D.C. Accessed online at:
<http://www.nps.gov/history/nr/publications/bulletins/pdfs/nrb15.pdf>.

**EXHIBIT 1. FIELD IMPLEMENTATION GUIDE
PROCEDURES FOR DETERMINING EFFECTS
TO HISTORIC PROPERTIES FOR WHICH SETTING, FEELING, OR ASSOCIATION
ARE ASPECTS OF INTEGRITY**

Purpose: To summarize the procedures for identifying and evaluating effects from the Energy Gateway South Transmission Project (Undertaking) on historic properties within the indirect effects Area of Potential Effects (APE)), for which the qualities of setting, feeling, or association are aspects of integrity, as defined in Appendix C of the Programmatic Agreement (PA). This field guide is intended as a quick reference for carrying out the procedures described in Appendix C.

Step 1: Define Indirect Effects APE and Conduct Viewshed Analysis:

The Undertaking's indirect effects APE extends to the visual horizon or a maximum of 3 miles on either side of the transmission line centerline, whichever is closer. Use a geographic information system (GIS) viewshed analysis to model the viewshed surrounding the Undertaking and refine the APE to include only areas where the Undertaking can be seen.

Step 2: Conduct a File Review–Screen for NRHP Eligibility:

Examine existing records for all sites in the refined APE to identify known sites that may be sensitive to visual effects. Sites that are eligible for the National Register of Historic Places (NRHP) under Criterion A, B, or C are considered potentially sensitive. Sites that are eligible only for their data potential (i.e., Criterion D) may be considered for analysis by the BLM in consultation with other applicable land managing agencies and the State Historic Preservation Officer (SHPO). Place a high priority on areas identified by Consulting Parties, even if outside the indirect effects APE. They have 60 days after the Record of Decision (ROD) is signed to provide this information. Site types may be used to search for sites that are likely to be eligible under A, B, and/or C. Screen site types for those for which setting, feeling, or association are important.

Step 3: Verify Site Integrity:

A site must retain integrity of setting, feeling, or association to be sensitive to effects caused by the Undertaking. Screen out sites that no longer possess integrity; i.e., have been destroyed or damaged to the extent that their integrity is compromised. If integrity of setting, feeling, or association has not been included in site documentation, determine the importance of these aspects to the historic property.

Outcomes: Steps 1 through 3 should result in a geodatabase of historic properties sensitive to integrity of setting, feeling, and/or association and visible from the Undertaking. Begin to compile this geodatabase as soon as the ROD is signed and a right-of-way (ROW) for the Undertaking is approved.

Step 4: Check Visual Simulations in the Office Prior to Fieldwork:

Employ GIS (for example, Google Earth “street view”) to visualize the Undertaking from the historic properties. In the office, assign Cultural Key Observation Points (CKOPs) at the center of historic properties in the geodatabase, then conduct a GIS analysis of the Undertaking’s visibility using those CKOPs. Identify intensive construction locales that may be important for assessing audible and atmospheric effects. View the simulated Undertaking’s nearest reference tower or intensive construction locale from the historic properties to screen out those historic properties where the effects of the Undertaking are clearly so minor that a field visit is not necessary. Compile a list of the historic properties eliminated by this process.

Produce computer-generated simulations that show the Undertaking from each CKOP. Take these images to the field for reference to help visualize where the Undertaking will be located in relation to each historic property that will be visited.

Outcome: Step 4 should result in a list of historic properties to evaluate in the field for effects from the Undertaking.

Step 5: Fieldwork–Visit Historic Properties to Verify Eligibility:

Use the National Register Bulletin’s *How to Apply the National Register Criteria for Evaluation* (National Park Service [NPS] 1995) as the primary reference to assess setting, feeling, or association as they apply to eligibility and integrity.

Record and recommend the National Register eligibility of cultural resources identified by Consulting Parties if they have not been previously recorded. Include an assessment of site integrity (setting, feeling, and association) with eligibility recommendations.

If a historic property has been destroyed or compromised to the extent that it is no longer eligible, document the site’s present condition with a site update and re-evaluate the historic property’s eligibility.

Outcome: Step 5 should result in a final list of historic properties to be field-evaluated for effects to setting, feeling, and association.

Step 6: Fieldwork–Take Photographs Before Construction:

At each historic property visited, establish at least one field CKOP representing a typical view of the Undertaking. If a historic property is large or linear, or if there are several important features at the property, more than one CKOP may be needed. Photograph the proposed Undertaking location from the CKOP. Take photos in the four opposite or perpendicular directions from each CKOP. Record camera height and aspect and GPS location for each CKOP. Use an appropriate lens; use the same camera and the same lens (or model of camera and lens) for all sites; include camera and lens information in report.

After fieldwork, superimpose all components of the Undertaking onto the photographic images to scale in proper geographic locations and with appropriate component elevations.

Step 7: Fieldwork—Analyze Effects on Setting, Feeling, or Association:

While referring to the simulations created in Step 4, evaluate the effect of the Undertaking using a visual assessment worksheet. Include at a minimum assessments of the following attributes: site integrity (setting, feeling, or association), distance, contrast, and cumulative effects.

Follow the guidelines in the BLM's Visual Resource Contrast Rating Handbook H-8431-1 for making the visual contrast rating, and use the Visual Contrast Rating Worksheet in the current Wyoming protocol Appendix C (BLM 2014), including recording the date and time of day of the rating. Recommend how contrast can be minimized.

Outcome: Steps 6 and 7 should result in recommendations regarding effects on the setting, feeling and association of each historic property documented with photographs from CKOPs showing visual simulations of the Undertaking, and written analysis of the attributes described above. Submit these records, along with site-form updates, with the report.

Step 8: Assess Effects on Setting, Feeling, or Association:

Address the primary question “can the setting, feeling or association of the property continue to effectively convey its historic significance despite the effect of the Undertaking?”

Recommend No Effect, No Adverse Effect, or Adverse Effect: An effect on setting, feeling, or association does not automatically call for an “Adverse Effect” recommendation. If an effect caused by the Undertaking does not meet the criteria for adverse effect in 36 CFR 800.5(a)(1) or the undertaking is modified or conditions are imposed so the adverse effect criteria are not met, then recommend “no adverse effect.” In other words, the effect may not compromise the integrity of the historic property to such an extent that it diminishes the integrity or causes an adverse effect.

Outcome: Step 8 should result in recommendations of effect for each historic property visited.

Step 9: Recommend Ways to Resolve Adverse Effects:

Avoidance is the preferred strategy for eliminating effects on historic properties. Avoidance methods include “screening” the transmission line by moving it behind a hill, moving transmission-line structure locations, and realigning proposed access routes. Minimizing adverse effects includes camouflaging or reducing the reflective qualities of construction materials, tapering or selective planting of native vegetation in cleared areas, and using existing access roads. Where on-site mitigation of visual effects cannot be achieved, alternative mitigation measures will be developed.

Address each historic property with adverse visual, auditory, or atmospheric effects from the Undertaking in the HPTP, which will be prepared after the ROD is signed, the Undertaking's footprint is finalized and the Class III inventory report is completed. Recognize that it may not be possible to resolve adverse effects on site and alternative mitigation may be required.

Outcome: Step 9 should result in a recommendation for resolving adverse effects for each historic property whose integrity of setting, feeling, or association will be adversely affected.

Step 10: After Construction is Completed:

Revisit each historic property visited in Step 7. Re-photograph and re-evaluate integrity and effects. Report pre- and post -construction integrity and effect evaluations with photos as a stand-alone report required by the HPTP.

Outcome: Step 10 should result in a post-construction check on the pre-construction integrity evaluations. This will help determine whether the process outlined above is working adequately.